IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

MFA.No. 978 of 1997(D)

OPMV.2081/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALAKKAD
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APPELLANT/PETITIONER:

K.V.GEORGE,SON OF VARKEY,
KUZHUPPIL HOUSE, CHULLY POST,
MANJAPRA, ERNAKULAM 683 581

BY ADV. SMT.S.CHITHRA
SRI.A.R.GANGADAS
SMT.ANJU GOVIND

RESPONDENTS/RESPONDENTS:

1.ELIYAS,S/O.MATHAYI,
AIRATTIL HOUSE, THANIPPADA,
CHUVANNAMANNU, TRICHUR DISTRICT.

2.M.P.JOY,S/O.PAILY,
MEKKATTU HOUSE, ELANAD POST,
TRICHUR DISTRICT.

3.UNITED INDIA INSURANCE CO. LTD.,
TRICHUR.

BY ADV. SRI.A.A.MOHAMMED NAZIR FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.978 OF 1997 (D)

Dated this the 23rd day of May, 2007

J U D G M E N T

KOSHY,J.

An agricultural worker aged 39 years while travelling in a bus met with an accident on 20.2.1993. He along with other passengers injured in the accident was admitted in the District Hospital, Palakkad. He was treated from 20.2.1993 to 27.3.1993 in the Government Hospital and thereafter he was treated from 2.3.1993 to 23.3.1993 at Little Flower Hospital, Angamaly. Thereafter for Ayurvedic treatment he was admitted at Parathivayalil Nursing Home for a further period of two months. Later he was referred to Medical College Hospital, Kottayam. Ext.A10 shows that there was no improvement in the condition of the petitioner. Ext.A11 is the medical certificate issued by Dr.Balakrishnan, Lecturer in Neurosurgery, Medical College Hospital, Kottayam. As per the above certificate petitioner has developed the following deficits as a

result of the injuries sustained in the accident.

i. Inability to perform sexual act due to lack of erection of penis - 20%.
ii. Poor bladder function with inability to control - 25%.
iii. Ancrectal - perianal anaesthesia with reflex regulation, no voluntary control - 10%.

It is certified that he is having total 55% deficit. Thus 55% permanent disability was certified by the doctor of the Medical College. The Tribunal found that accident occurred due to the negligence of the driver of the bus in which he was travelling and the above bus was insured by the 3rd respondent Insurance company and awarded a total compensation of Rs.42,300/-. Tribunal awarded compensation as follows:

a) Loss of earning for four months	Rs.2800/-
b) Transport expenses.	Rs.1000/-
c) Extra nourishment.	Rs.500/-
d) Damage to clothing.	nil
e) Pain and suffering.	Rs.10,000/-
f) Medical expenses and attendant expenses.	Rs.3,000/-

g) Loss of earning power.	nil
h) Permanent disability.	Rs.10,000/-
i) Loss of amenities in life.	Rs.15,000/-

Only quantum of compensation is disputed herein.

2. According to the claimant he was earning Rs.50/- per day as his monthly income is Rs.1,500/-. Even for a non earning person as per the second schedule notional income is Rs.15,000/- (Rs.1,250). But the tribunal has fixed only Rs.700/- per month. For a 39 year old able person the tribunal should have fixed at least the notional income of a non earning person. Therefore we fix the monthly income of the petitioner as Rs.1,250/-. It is admitted by the tribunal that he was unable for four months where he was under treatment . Therefore loss of earning for four months will be Rs.5,000/-. Claimant will be entitled to an additional amount of Rs.2,200/- under the head loss of earning for four months. Petitioner suffered compressed fracture on L-1 vertebra. He needs continuous treatment. No compensation was awarded for loss of earning power even though for permanent disability compensation of Rs.10,000/- was awarded. Even going by the doctor's undisputed medical

certificate there was poor bladder function with inability to control and doctor has awarded 25% disability for that and for ancrectal perianal anaesthesia with reflex regulation doctor has certified that there is 10% disability, even though 20% disability awarded for inability to perform sexual act due to lack of erection may not affect his earning capacity. We are of the opinion that tribunal ought have granted compensation of 35% loss of earning power. Considering his age, 16 is taken as the multiplier. Hence compensation payable for loss of earning capacity and disability will be (15,000 x $^{35}/_{100}$ x 16) = Rs.84,000). Tribunal has awarded Rs.10,000/- for permanent disability and that has to be deducted and claimant will be entitled to an additional amount of Rs.74,000/- more for loss of earning power and permanent disability. Of course there was inability to perform sexual act due to lack of erection. Award of Rs.15,000/- for loss of amenities was granted by the tribunal. Hence no further amount need be granted for the same. Even though claimant claimed Rs.2,00,000/- for medical expenses and another Rs.10,000/- for future medical expenses, tribunal has awarded for medical and attendant expenses as Rs.3,000/- as bills produced was only for Rs.1,880/-. Considering the nature of

the injuries, future treatment etc., we are of the opinion that another Rs.3,800/- should be awarded for medical and treatment expenses. Thus claimant will be entitled to an additional amount of Rs.80,000/- over and above the decreed amount by the tribunal and we award the same. It is submitted that appeal filed by the petitioner was dismissed for default in 2003. Restoration petition was filed on 6.12.2006 and it was restored on 6.12.2006. Hence the additional amount of Rs.80,000/- with interest at the rate of 9% per annum from 6.12.2006 till deposit should be deposited by the 3rd respondent Insurance company. On deposit appellant is allowed to withdraw the same. Appeal is allowed partly.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.978 OF 1997 ()

J U D G M E N T

23rd May, 2007